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10/538,480

06/07/2005

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EXAMINER

SKED, MATTHEW J

ART UNIT

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2626

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/538,480 | Applicant(s) RIKIMARU, HIROSHI | |
| | Examiner Matthew J. Sked | Art Unit 2626 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9 and 10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are drawn to a "program" *per se* as recited in the preamble and as such is non-statutory subject matter. See MPEP § 2106.IV.B.1.a. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and

other claimed elements of a computer, which permit the computer program's functionality to be realized.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2 and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wright et al. (U.S. Pat. 6,109,107).

As per claims 1, 2 and 8-10, Wright teaches a diagnostic method and program comprising:

outputting a Noise-Vocoded Speech Sound signal (presents the individual with several patterns of target sound stimuli and mask sound stimuli, col. 3, lines 29-48) that is obtained by:

dividing at least one portion of a sound signals into a plurality of frequency band signals (Fig. 2); and

subjecting the frequency band signal to noise (provides target-mask stimuli pairs, col. 4, lines 13-58);

receiving a response of a patient (individuals indicates if they perceive the target stimulus, col. 4, lines 13-58); and

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diagnosing a disease of the patient based on the response (determines if the individual has a language impairment, col. 2, line 64 to col. 3, line 28 and col. 4, lines 13-58).

4. As per claim 7, Wright teaches a sound signal extracting procedure for extracting only a sound component from a sound signal, wherein the Noise Vcoded Speech Sound signal is obtained by converting at least one portion of the extracted sound component to a Noise Vcoded Speech Sound signal (target stimuli is a sound signal component, col. 3, lines 29-48).

5. Alternatively, claims 1, 2 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Sturner et al. (U.S. Pat. 5,303,327).

As per claims 1, 2 and 8-10, Sturner teaches a diagnostic method and program comprising:

outputting a Noise-Vcoded Speech Sound signal (presents a verbal auditory stimulus to the subject, col. 3, lines 52-54) that is obtained by:

dividing at least one portion of a sound signals into a plurality of frequency band signals; and subjecting the frequency band signal to noise (enhancing or reducing parts of the spectrum with a masking noise, col. 6, lines 38-47);

receiving a response of a patient (verbal response, col. 3, lines 52-63); and

diagnosing a disease of the patient based on the response (evaluates the subjects vocalization and determines their hearing acuity and middle ear status, col. 10, lines 5-38).

6. As per claims 3 and 11, Sturner teaches wherein a disease is estimated with reference to a disease database, based on information corresponding to the output Noise Vcoded Speech Sound signal and the response (model to determine if further testing is needed, col. 5, lines 30-47).

7. As per claims 5 and 6, Sturner teaches wherein at least one of a number of the band filtering procedures for division into frequency band signals and a frequency of a frequency band boundary can be changed, at least depending on the language (system accounts for regional dialects, col. 5, lines 48-67).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright in view of Applicant's admitted prior art.

As per claim 4, Wright does not teach wherein the Noise-Vcoded Speech Sound signal in which a component of a sound source signal is subjected to noise is generated by: extracting a frequency band signal with a predetermined frequency band from at least one portion of the sound signal by a first band filtering procedure having a plurality band filtering procedures; extracting an amplitude envelope of each frequency signal by an envelope extracting procedure; generating a frequency band noise signal

corresponding to the predetermined frequency band from a noise source signal by a second band filtering procedure having a plurality of band filtering procedures; multiplying the frequency band signal by the frequency band noise signal in a multiplying procedure; and accumulating outputs obtained by the multiplying procedure in an adding procedure.

Applicant's admitted prior art teaches wherein the Noise-Vocoded Speech Sound signal in which a component of a sound source signal is subjected to noise is generated by: extracting a frequency band signal with a predetermined frequency band from at least one portion of the sound signal by a first band filtering procedure having a plurality band filtering procedures; extracting an amplitude envelope of each frequency signal by an envelope extracting procedure; generating a frequency band noise signal corresponding to the predetermined frequency band from a noise source signal by a second band filtering procedure having a plurality of band filtering procedures; multiplying the frequency band signal by the frequency band noise signal in a multiplying procedure; and accumulating outputs obtained by the multiplying procedure in an adding procedure (pg. 2, lines 7-16).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the system of Wright wherein the Noise-Vocoded Speech Sound signal in which a component of a sound source signal is subjected to noise is generated by: extracting a frequency band signal with a predetermined frequency band from at least one portion of the sound signal by a first band filtering procedure having a plurality band filtering procedures; extracting an amplitude envelope of each frequency signal by

an envelope extracting procedure; generating a frequency band noise signal corresponding to the predetermined frequency band from a noise source signal by a second band filtering procedure having a plurality of band filtering procedures; multiplying the frequency band signal by the frequency band noise signal in a multiplying procedure; and accumulating outputs obtained by the multiplying procedure in an adding procedure as taught by Applicant's admitted prior art because it would ensure that the noise is properly imposed within the required frequency bands.

10. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sturner in view of Applicant's admitted prior art.

As per claim 4, Sturner does not teach wherein the Noise-Vocoded Speech Sound signal in which a component of a sound source signal is subjected to noise is generated by: extracting a frequency band signal with a predetermined frequency band from at least one portion of the sound signal by a first band filtering procedure having a plurality band filtering procedures; extracting an amplitude envelope of each frequency signal by an envelope extracting procedure; generating a frequency band noise signal corresponding to the predetermined frequency band from a noise source signal by a second band filtering procedure having a plurality of band filtering procedures; multiplying the frequency band signal by the frequency band noise signal in a multiplying procedure; and accumulating outputs obtained by the multiplying procedure in an adding procedure.

Applicant's admitted prior art teaches wherein the Noise-Vocoded Speech Sound signal in which a component of a sound source signal is subjected to noise is generated by: extracting a frequency band signal with a predetermined frequency band from at least one portion of the sound signal by a first band filtering procedure having a plurality band filtering procedures; extracting an amplitude envelope of each frequency signal by an envelope extracting procedure; generating a frequency band noise signal corresponding to the predetermined frequency band from a noise source signal by a second band filtering procedure having a plurality of band filtering procedures; multiplying the frequency band signal by the frequency band noise signal in a multiplying procedure; and accumulating outputs obtained by the multiplying procedure in an adding procedure (pg. 2, lines 7-16).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the system of Sturmer wherein the Noise-Vocoded Speech Sound signal in which a component of a sound source signal is subjected to noise is generated by: extracting a frequency band signal with a predetermined frequency band from at least one portion of the sound signal by a first band filtering procedure having a plurality band filtering procedures; extracting an amplitude envelope of each frequency signal by an envelope extracting procedure; generating a frequency band noise signal corresponding to the predetermined frequency band from a noise source signal by a second band filtering procedure having a plurality of band filtering procedures; multiplying the frequency band signal by the frequency band noise signal in a multiplying procedure; and accumulating outputs obtained by the multiplying procedure

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in an adding procedure as taught by Applicant's admitted prior art because it would ensure that the noise is properly imposed within the required frequency bands.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Litovsky (U.S. Pat. 6,584,440) teaches a method for determining speech intelligibility in children by imposing noise on outputted speech.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Sked whose telephone number is (571) 272-7627. The examiner can normally be reached on Mon-Fri (8:00 am - 4:30 pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Hudspeth can be reached on (571) 272-7843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MS

6/19/07



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